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In re Application of: Jamil et al  
Application No. 10/671,844  
Attorney Docket No. MP1491  
42P17407 (old #)

**DECISION ON PETITION**

Filed: September 25, 2003  
For: Apparatus and Method for Power  
Optimized Replay

This is a decision on the petition under 37 CFR ' 1.8 (b), filed on September 29, 2006, to accept the copy of a response to the non-final Office action of January 10, 2006 as being timely filed.

The petition is **GRANTED**.

It is noted that a Notice of Abandonment was never mailed to the applicant. However, more than six months have passed since the mailing of the Office action of January 10, 2006.

The petition states that a timely response was mailed with Certificate of Mailing on April 10, 2006. The response includes an amendment. A copy of the previously mailed correspondence with certificate of mailing thereon were filed with the petition. A return postcard with a PTO date stamp was never received by applicant. Neither is there any indication of receipt of the papers filed in the PAIR system.

The original response was not of record and cannot be located. However, M.P.E.P. ' 503 states that A(a) post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO. The copy of the post card receipt submitted with the petition itemizes and properly identifies that an amendment and response was filed on April 10, 2006. However post card receipt with a PTO date stamp was never received by the applicant, it does not establish receipt of the papers by the PTO. The M.P.E.P. at section 512 states that under 37 CFR 1.8, a person may state a certain paper directed to the Office (exceptions are stated in 37 CFR 1.8), as the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. If the date stated is within the period for response, the response in most

instances will be considered to be timely. The copy of the response filed with the petition includes a Certificate of Mailing bearing a date of April 10, 2006, which makes it acceptable as being timely filed under 37 CFR ' 1.8(a).


Accordingly, in view of the above stated reasons, it is hereby accepted that a response to the Office action of January 10, 2006 was timely mailed. The application was not abandoned in fact.

The petition is **GRANTED**. The holding of abandonment is withdrawn.

The copy of the response submitted on April 10, 2006 is accepted as timely since the response originally submitted was apparently lost.

This application file is being forwarded to the Group technical support staff for entry of the copy of the amendment in place of the original. From there, the application file will be forwarded to the examiner for prompt reconsideration.

It is noted that the address of record is different from the return address on the petition. The petition decision is being sent to the current address on record, and a copy of the decision is being mailed to the return address on the petition.

  
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Jack Harvey, Director  
Technology Center 2100  
Computer Architecture, Software,  
and Information Security

cc:

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